

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: GENERIC PHARMACEUTICALS PRICING ANTITRUST LITIGATION	MDL 2724 16-MD-2724
THIS DOCUMENT RELATES TO: <i>ALL ACTIONS</i>	HON. CYNTHIA M. RUFE

**REPLY IN SUPPORT OF CERTAIN DEFENDANTS’ MOTION FOR CLARIFICATION
REGARDING THE COURT’S JULY 14, 2020 MEMORANDUM AND ORDER
ON BELLWETHER SELECTION**

Indirect Reseller Plaintiffs’ (“IRPs”), joined by all other plaintiffs (collectively “Plaintiffs”), fail to offer a single substantive reason to explain why they should be excused from the bellwether process. Nor do they address undersigned Defendants’ arguments about why it was correct for the Court to have included them as bellwethers. *See* Pls.’ Opp’n at 1-2 (ECF No. 1481).

Plaintiffs fail to address the plain terms of the Court’s July 14, 2020 Memorandum and Order, which sensibly included all three categories of putative class plaintiffs in the Court’s selected bellwether cases. *See* ECF No. 1442 at 2, 3 (defining the term “Private Plaintiffs” to include “indirect reseller plaintiffs” and requiring “Plaintiffs” to prove that they can meet the standards for class certification under Rule 23); ECF No. 1443 (ordering bellwethers to include “Private Plaintiffs” class-action complaints for Clobetasol, Clomipramine, and Pravastatin).

Plaintiffs also fail to respond to every other argument set forth in Defendants’ Motion for Clarification—namely, that including the IRPs in the bellwether cases is consistent with the

Court's purpose in selecting bellwether cases, consistent with the purpose of consolidating the IRPs' complaints in the MDL, and otherwise required as a matter of fundamental fairness. *See* Defs.' Mot. for Clarification (ECF No. 1479) at 2-3 (addressing substantive, fairness, and efficiency concerns).

Indeed, as is made clear from Plaintiffs' response to Defendants' Motion for Clarification, which claims that the Court did not mean what it said in approving the general approach outlined in Special Master Marion's Report and Recommendation, there is no principled reason to exclude the IRPs from the bellwether cases.¹ For these reasons and the reasons stated in Defendants' Motion, Defendants respectfully request that the Court confirm that the IRPs' class-action complaints for Clobetasol, Clomipramine, and Pravastatin are included among the bellwether cases.

¹ Plaintiffs suggest that Defendants agreed in a submission to the Special Master that the IRP cases should not be included among the bellwether cases. *See* Opp'n at 2 (quoting ECF No. 1333 at 15 n.6). Plaintiffs are wrong. Defendants suggested that the IRPs' overarching conspiracy complaint would not be suitable for inclusion with Defendants' proposed Heritage-centric bellwethers given its broader scope, not that IRPs should be omitted from the individual product bellwethers. Indeed, Plaintiffs acknowledge, as they must, that Defendants have consistently maintained that it "makes no sense" to omit the IRPs from individual product bellwethers. *See* Opp'n at 2 (quoting ECF No. 1353 at 14 n.14).

Date: August 13, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2020, I caused a copy of the foregoing Reply in Support of Motion for Clarification Regarding the Court's July 14, 2020 Memorandum and Order on Bellwether Selection to be served on counsel of record via the Court's CM/ECF system.

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